No. 15744

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

EDGAR ALLAN GALLEGOS and GLORIA GALLEGOS, also known as ANA GLORIA SASSO VALDIVIESO,

Appellants,

vs.

ALBERT DEL GUERCIO, as District Director for the Los Angeles District, Immigration and Naturalization Service, United States Department of Justice,

Appellee.

BRIEF FOR APPELLEE.

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vs.

ALBERT DEL GUERCIO, as District Director for the Los Angeles District, Immigration and Naturalization Service, United States Department of Justice,

Appellee.

BRIEF FOR APPELLEE.

Jurisdiction.

Appellants, plaintiffs below, sought a review of, and to enjoin enforcement of, final Orders of Deportation based on warrants of arrest [R. 2-6].[1] The District Court entered judgment in favor of appellee [R. 10-15]. The District Court had jurisdiction under Section 10 of

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[1]References to the typewritten Transcript of Record will be indicated "R." References to appellants' deportation hearings contained in a certified record of the Immigration and Naturalization Service, received in evidence in this action as Exhibit "A" and considered in its original form, will be indicated "Serv. R."; while references to exhibits received in evidence at the deportation hearing will be indicated by "Serv. R. Exh." References to appellants' brief will be indicated by "App. Br."

the Act of June 11, 1946, commonly referred to as the Administrative Procedure Act, 60 Stat. 243, 5 U. S. C., Section 1009 (*Shaughnessy v. Pedreiro,* 349 U. S. 48 (1955)); and its judgment being a final decision, jurisdiction is conferred upon this Court by 28 U. S. C., Section 1291.

Statement of the Case.

The following facts were admitted by the pleadings: That Appellant, Edgar Gallegos, is an alien, a native and citizen of Nicaragua, admitted for permanent residence at El Paso, Texas, on September 18, 1945 [R. 2-6, 7-9]. Appellant Ana Gloria Gallegos is an alien, a native and citizen of El Salvador, admitted for permanent residence at Laredo, Texas, on July 1, 1951 [R. 2-6, 7-9]. On February 17, 1955, warrants of arrest issued by the District Director, Immigration and Naturalization Service, Los Angeles, California, were served on appellants, charging their deportability under Section 241(a)(13) of the Immigration and Nationality Act of 1952 (8 U. S. C., Sec. 1251(a)(13)), in that within five years they knowingly and for gain encouraged, induced, assisted, abetted, or aided another alien to enter the United States in violation of law.

There is no dispute that the Immigration Service Record [Exh. "A" in District Court] reveals the following facts:

Deportation hearings were held on March 3, 1955 [Serv. R. 1-20], August 17, 1955 [Serv. R. 21-81], and August 26, 1955 [Serv. R. 82-137]. On December 28, 1955, the Special Inquiry Officer before whom the hearings were held ruled that the charges in the warrants of arrest were substantiated by the evidence produced at

the hearings and appellants should be deported. From that ruling, appellants appealed to the Board of Immigration Appeals, and on March 23, 1956, the Board of Immigration Appeals ordered the case reopened for the taking of further evidence concerning the "gain" received by appellants in acquiring the alien as their housemaid-babysitter. The Board of Immigration Appeals stated:

> "We believe that the record should be clarified as to any gain accruing to the respondents from the illegal entry of Miss Medrano-Represa. We will, therefore, direct a reopening of the proceedings for the purpose of ascertaining what is the standard and minimum wage for like employment as the employment of Miss Medrano-Represa in Los Angeles, California, and vicinity."

On May 10, 1956, and May 31, 1956, hearings were again held before the same Special Inquiry Officer. Reports by two Immigration Service Investigation Officers were introduced into evidence over objection of appellants as Exhibits "6" and "7" to show the prevailing wages of housemaid-babysitters in the Los Angeles area.

On June 6, 1956, the Special Inquiry Officer, based upon the additional facts testified to in the hearings, and based upon Exhibits "6" and "7" (8a and 9 in proceedings against appellant Mrs. Gallegos), ruled that appellants had received "gain" from assisting the alien in her illegal entry. On appeal therefrom, appellants claimed error in the admission of the investigative reports, and claimed insufficiency of evidence to show that appellants either "assisted, induced, etc." the alien in her illegal entry, or that they received any gain from such entry. On August 14, 1956, the Board of Immigration Appeals dismissed that appeal on the ground that appellants' contentions were without support.

It is admitted by the pleadings that a warrant of deportation was thereafter issued against appellants [R. 2-6, 7-9]. Appellants filed complaint in the District Court alleging the following errors: That due process and a fair hearing had been denied by the Special Inquiry Officer by the admission of Exhibits "6" and "7" in the hearings in May, 1956; that a finding of deportability based upon such exhibits was without "reasonable, substantial and probative evidence"; that there was no evidence of "gain"; that at all times appellants denied and continue to deny having knowingly and for gain encouraged or aided in bringing the alien into the United States or aiding her attempt to enter the United States. Appellee's answer denied such allegations. At the trial, the Administrative file—the only exhibit in evidence—was marked Exhibit "A".

The Court below found that there was reasonable, substantial and probative evidence to support the finding that appellants committed the acts charged in the warrants of arrest—*i.e.,* knowingly and for gain assisted the alien in entering illegally; that due process was had in all proceedings; and that the introduction of Exhibits "6" and "7" into evidence did not constitute a denial of due process.

Appellants raise the following issues on appeal:

1. Was there sufficient evidence to show that appellants aided, encouraged, induced, assisted or abetted the alien to enter the United States illegally?

2. If appellants so aided, abetted, etc., did they do so for "gain"?

3. Was due process denied in admitting Exhibits "6" and "7" in the Immigration Hearings because they con-

stituted hearsay evidence, or, as appellant claims, "hearsay upon hearsay"?

4. Did Exhibits "6" and "7" provide any reasonable, substantial and probative evidence upon which to decide that "gain" had accrued to appellants? Was a sufficient foundation laid therefor—*i.e.*, was it shown that the nature of employment considered by those agencies which provide the figures to the investigating officers was "like employment" to the employment of the alien, Hildra Medrano, as required by the Board of Immigration Appeals when it ordered further hearings?

Statutes and Regulations Involved.

Section 241(a)(13) of the Immigration and Nationality Act of 1952, 66 Stat. 204, 8 U. S. C., Section 1251(a)(13), provides in pertinent part:

> "Sec. 241(a) Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—
>
> * * * * * * * *
>
> (13) prior to, or at the time of any entry, or at any time within five years after any entry, shall have, knowingly and for gain, encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law; . . ."

Section 242(b) of the Immigration and Nationality Act, 66 Stat. 209, 8 U. S. C., Section 1252(b), provides in pertinent part:

> "(b) A special inquiry officer shall conduct proceedings under this section to determine the deportability of any alien, and shall administer oaths, present and receive evidence, interrogate, examine, and

cross-examine the alien or witnesses, and, as authorized by the Attorney General, shall make determinations, including orders of deportation. . . . *Proceedings before a special inquiry officer* acting under the provisions of this section *shall be in accordance with such regulations,* not inconsistent with this chapter, *as the Attorney General shall prescribe.*

Such regulations shall include requirements that—

* * * * * * * *

(3) the alien shall have a reasonable opportunity to examine the evidence against him, to present evidence in his own behalf, and to cross-examine witnesses presented by the Government, and

(4) no decision of deportability shall be valid unless it is based upon reasonable, substantial, and probative evidence." (Emphasis added.)

Section 242.54(b) of 8 Code of Federal Regulations (Rev. 1952) provides:

"Section 242.54. Contents of record; evidence—

(b) Use of prior statements. The special inquiry officer may enter of record any statement, oral or written, which is material and relevant to any issue in the case, previously made by the respondent or any other person during any investigation, examination or hearing. If objection thereto is made by the alien or his counsel or representative, the reasons for the objection, as well as the ruling thereon by the special inquiry officer, shall be made a part of the record."

Summary of Argument.

I.

The Finding that appellants are subject to deportation because they knowingly assisted, abetted or aided another alien to enter the United States in violation of law is supported by reasonable, substantial and probative evidence in the form of sworn statements of the alien assisted and of appellant Edgar Gallegos before the Immigration Service investigating officer in February, 1955, admitted in evidence at the deportation hearings. Such evidence clearly shows sufficient facts to constitute "aiding, abetting or assisting" as required by 8 U. S. C., Section 1251(a)(13), under the case of *Navarette-Navarette v. Landon,* 223 F. 2d 234 (C. A. Cal., 1955), cert. den. 351 U. S. 91, 76 S. Ct. 700, 100 L. Ed. 1445.

II.

The Finding that appellants assisted, etc., the alien's illegal entry for purposes of gain is supported by reasonable, substantial and probative evidence, and due process was not denied by the admission of Exhibits 6 and 7, upon which the finding of "gain" was based.

1. The Findings of the Immigration Service and the District Court on review reveal "gain" in the instant case to be the *financial* advantage to appellants in employing the alien Hilda Medrano-Represa as a housemaid-babysitter at substandard wages and in providing relief for Mrs. Gallegos so that she was able to work.

2. The evidence is clear that the alien hired by appellants received only $20 per month salary plus room and

board. Exhibits 6 and 7 in the proceedings against the appellant husband [Exhs. 8a and 9 in the proceedings against the appellant wife] consisting of investigative reports of wage scales in Los Angeles area established the prevailing wage scale for employment like that of the alien Hilda Medrano-Represa as $100 per month plus room and board. Therefore, the evidence shows that appellants incurred a financial gain from hiring the alien at substandard wages. In addition, the testimony of Mr. Gallegos in his sworn statement [Serv. R. Exh. 4] reveals that Mrs. Gallegos was able to work because she obtained the alien's services, and therefore the appellants obtained additional benefit from assisting the alien's illegal entry.

3. Due process and fair hearing were not denied appellants by the admission of Exhibits 6 and 7 [Exhs. 8a and 9] in the deportation hearings. Hearsay evidence is admissible in deportation hearings under well-established law. In addition, appellants failed to submit refuting testimony and made no attempt to interview the source of the information contained in such exhibits (*i.e.,* the United States Employment Security Office and the California Department of Labor), although said exhibits revealed the sources. (*United States ex rel. Impastato v. O'Rourke,* 211 F. 2d 609 (C. C. A. Mo., 1954), cert. den. 348 U. S. 827, 75 S. Ct. 47, 99 L. Ed. 652; *Choy Gum v Backus,* 223 Fed. 487, 492-493 (C. C. A. Cal., 1915), cert. den. 239 U. S. 649, 36 S. Ct. 284, 60 L. Ed. 485.)

ARGUMENT.

I.

The Finding That Appellants Are Subject to Deportation Because They Knowingly Assisted, Abetted or Aided Another Alien to Enter the United States in Violation of Law Is Supported by Reasonable, Substantial and Probative Evidence.

A. Evidence Produced at Deportation Hearings Supports This Finding.

Appellants concede that a decision of deportability is valid if supported by "reasonable, substantial and probative evidence." (Sec. 242(b)(4) of the Immigration and Nationality Act, 66 Stat. 210, 8 U. S. C., Sec. 1252 (b)(4); 8 C. F. R. (Rev. 1952, Amd. 1956), Sec. 242.14(a).) However, appellants claim that there is no reasonable, substantial and probative evidence to support the finding of the Special Inquiry Officer and of the Board of Immigration Appeals of the Immigration Service that appellants knowingly assisted, abetted or aided the alien Hilda Medrano-Represa in illegally entering the United States.

The evidence upon which the Special Inquiry Officer found that appellants had assisted Hilda Medrano-Represa in her illegal entry into the United States was in the form of sworn statements before Immigration Service Investigating Officers on February 15, 1955, prior to issuance of the warrants of deportation [Serv. R., Special Inquiry Officer's decision of December 28, 1955, p. 8]. Although these sworn statements were partially repudiated by the witnesses while testifying at the deportation hear-

ings, no attack upon the admission of such statements into evidence was made on appeal to the Board of Immigration Appeals nor during this review proceeding.

The law is well settled that although such sworn statements of the aliens subject to deportation constitute hearsay evidence, they are admissible in deportation hearings not only because they constitute an exception to the hearsay rule where they consist of admissions by the aliens of facts relevant to the aliens' deportability, but also because hearsay evidence is admissible in administrative proceedings. *Schoeps v. Carmichael,* 177 F. 2d 391, 396-397 (C. A. Cal, 1949), cert. den. 339 U. S. 914, 70 S. Ct. 566, 94 L. Ed. 1340, where the Court stated:

> "The basic questions in this case are whether the admission of appellant's sworn statements violated standards of fundamental fairness necessary to the validity of the hearing or violated the procedural regulations here applicable and necessary to assure such fairness. This Circuit has uniformly held such statements to be admissible."

See also:

> *Quattrone v. Niccols,* 210 F. 2d 513, 517 (C. A. Mass., 1954), cert. den. 347 U. S. 976, 74 S. Ct. 786, 98 L. Ed. 1116.

The law is also well settled that the sworn statement of the alien Hilda Medrano-Represa was admissible although hearsay evidence, since hearsay evidence is admissible in administrative proceedings in general, and in deportation hearings in particular. (*Hyun v. Landon,* 219 F. 2d 404, 408 (C. A. Cal., 1955), affd. 350 U. S. 990, 76 S. Ct. 541, 100 L. Ed. 856, reh. den. 351 U. S. 928, 76 S. Ct. 777, 100 L. Ed. 1457 and 1458.) However, similarly, appellants have not attacked the admission of Hilda's sworn statement into evidence.

B. The Admissible Sworn Statement of Hilda Medrano-Represa Supports the Finding of Assisting Illegal Entry.

The alien Hilda Medrano-Represa testified to the following facts before an Immigration Service Investigating Officer prior to the issuance of the warrants of arrest on February 15, 1955 [Serv. R. Exh. 5, p. 3 in Appellant Edgar Gallegos' proceedings and Exh. 6, p. 3, in Ana Gloria Gallegos' proceedings. (Note: Exh. 6 is an original and Exh. 5 is a carbon copy of Exh. 6)]: that she had known appellant Mrs. Gallegos for some years, and, in fact, lived at Mrs. Gallegos' house in San Ana, El Salvador; that she contracted with appellant Mrs. Gallegos in January, 1954, to accept employment with Mrs. Gallegos in the United States at $25 per month; that the Gallegoses paid her plane fare to Tijuana in order to get a visa for her from the American Consul at Tijuana, so that she might enter the United States legally; that they were not able to obtain one immediately, so the Gallegoses left her there and returned to the United States, but visited her each week for eight weeks; that in April, 1954, before any visa was obtained, the lady (with whom Hilda was staying upon the Gallegos' instruction) was not able to keep Hilda any longer and the following testimony was given [Serv. R. Exhs. 5 and 6 above referred to, pp. 4-5]:

> "Q. Why did you not remain in Tijuana until you secured your visa and then come into the United States legally? A. Mrs. Ramirez [lady with whom Hilda was staying in Tijuana] became pregnant and wrote to Ana Gloria Gallegos that she couldn't keep me any longer. Mr. and Mrs. Gallegos came to the house in Tijuana and told me that arrangements had been made to take me to the United States. They

were to wait for me in the United States and that I would be brought to them.

Q. Who took you across the line to where the Gallegos were waiting? A. A woman. I did not know her. She met me in the street, and took me to where the Gallegos were waiting. She told me they were waiting near a store for me.

* * * * * * * *

Q. Who was waiting at the car when you arrived? A. Mr. and Mrs. Edgar Gallegos. I got into the car and we came to their residence in Los Angeles."

This testimony standing alone supports the finding that appellants assisted the alien in her illegal entry of the United States. Although Hilda, at the subsequent deportation hearing on August 26, 1955, repudiated her testimony that appellants had arranged to meet her at the border, and testified that the meeting was accidental [Serv. R. pp. 96-119] and that the sworn statement was not accurately reported, the trier of fact, in this instance the Special Inquiry Officer, resolved the conflicting testimony against appellants. The Investigating Officer before whom the statement was made was called and testified to its accuracy [Serv. R. pp. 104-110]. That resolution was solely within the province of the trier of fact and should not be upset on judicial review. Although appellants contend on appeal that Hilda's testimony was confused (App. Br. p. 9, lines 6-11), Hilda's testimony was, in fact, only contradictory. It was the duty of the trier of fact to determine the credibility of Hilda Medrano when testifying during the hearings. (*Morikichi Suwa v. Carr,* 88 F. 2d 119, 121 (C. C. A. Cal., 1937); *Taranto v. Haff,* 88 F. 2d 85 (C. C. A. Cal., 1937).)

In addition to the sworn statement of Hilda Medrano-Represa as evidence against appellants, the Special Inquiry Officer had before him the sworn statement of appellant Edgar Gallegos, which was admitted in evidence in the proceedings against Edgar Gallegos, and which supports the finding that he assisted Hilda's illegal entry into the United States as hereinafter detailed.

C. The Admissible Sworn Statement of Edgar Allan Gallegos Supports the Finding of Assisting Illegal Entry.

Appellant Edgar Gallegos testified before an Immigration Investigating Officer on February 15, 1955, prior to the issuance of the warrants of arrest, to the following facts: That appellants' purpose in bringing Hilda to the United States was to work in their home as a domestic servant [Serv. R. Exh. 4, p. 5]; that appellants left her in Tijuana (as Hilda had testified) while attempting to get her a visa; that a woman called appellants in Los Angeles to have them pick Hilda up on the United States side of the line in April, 1954; the woman promised to make arrangements to get Hilda across the line if appellants would meet her in San Ysidro; that appellants agreed [Serv. R. Exh. 4, pp. 6-7]. Mr. Gallegos testified:

> "Q. But you did know that the girl had been illegally brought into the United States that morning, is that true? A. Yes, sir. I had been trying to get her into the United States and we were going to wait for a visa but when we found that we didn't have any other place to leave her—we had been paying this woman to keep her there—we went down and met her and brought her home with us." [Serv. R. Exh. 4, p. 7.]

He also stated Mrs. Gallegos paid the woman some money [Serv. R. Exh. 4, p. 7] and added:

> "Q. Has this girl been with you ever since you brought her to the United States in April, 1954? A. Yes, sir.
>
> * * * * * * * *
>
> Q. Do you admit that you wilfully and knowingly aided this girl in entering the United States, knowing that she was not entitled to enter? A. Yes, it is the truth." [Serv. R. Exh. 4, p. 8.]

It is obvious that appellant Edgar Gallegos' testimony, regarding appellants' assistance in Hilda's illegal entry, although subsequently repudiated by him at the deportation hearing on March 3, 1955 on the claim that the transcript of this testimony was inaccurate [Serv. R. p. 8], was sufficient alone to warrant the finding of deportability in the proceedings against Mr. Gallegos. However, it need not stand alone, since the Special Inquiry Officer had before him the additional sworn statement of Hilda Medrano-Represa upon which to base his findings of fact. The Special Inquiry Officer called as a witness Immigration Officer Buselle before whom appellant Edgar Gallegos made his sworn statement on February 15, 1955, who testified to the accuracy of the transcript [Serv. R. pp. 72-78].

This evidence clearly supports the finding by the Special Inquiry Officer, affirmed by the Board of Immigration Appeals on March 23, 1956, that appellants aided and assisted Hilda Medrano-Represa in illegally entering the United States. Although appellants did not actually transport Hilda across the border, their acts were held sufficient in *Navarette-Navarette v. Landon,* 223 F. 2d 234, 236 (C. A. Cal., 1955), cert. den. 76 S. Ct. 700, to con-

stitute a violation of the Immigration Act of 1952 in that they "aided, assisted, etc. . . ." an alien's illegal entry.

Appellants argue on appeal that there is "no dispute that they returned Hilda to Tijuana within a few days of her arrival in April, 1954, but that Hilda returned of her own accord to Los Angeles, without their assistance in January, 1955. Although it is true that Mrs. Gallegos so testified [Serv. R. p. 29], the evidence is clearly in dispute on this point. Hilda Medrano consistently testified that she has continuously remained in the United States since her entry in April, 1954 [see Hilda's sworn statement, Serv. R. Exhs. 5 and 6, pp. 5-6, and her testimony in deportation hearing, Serv. R. pp. 88-89]. Likewise Edgar Gallegos' sworn statement [Serv. R. Exh. 4, p. 8] and his testimony at the hearings [Serv. R. p. 12: "Q. Why haven't you sent the girl Hilda back to Mexico or El Salvador since she entered here in April, 1954? A. Because we thought the Consul was going to give the visa."] were to the same effect.

II.

The Finding That Appellants Knowingly Assisted, Etc., the Alien Hilda Medrano-Represa's Illegal Entry for Gain Is Supported by Reasonable, Substantial and Probative Evidence.

A. Findings of Special Inquiry Officer and District Court.

After the first decision of the Special Inquiry Officer on December 28, 1955, appellants appealed to the Board of Immigration Appeals and the Board of Immigration Appeals ordered the hearings reopened, with the following comments:

> "We believe that the record should be clarified as to any gain accruing to the respondents from the illegal entry of Miss Medrano-Represa. We will

therefore direct a reopening of the proceedings for the purpose of ascertaining what is the standard and minimum wage for like employment as the employment of Miss Medrano-Represa in Los Angeles, California, and vicinity."

The hearings were reopened on May 10, 1956. Evidence was given, in the form of two reports by investigating officers, reflecting the results of their inquiries of the United States Employment Service Office and the State of California Department of Labor through Mr. Joseph Levy, Employment Security Officer, regarding the minimum wages of housemaid-babysitters. These reports were marked Exhibits 6 and 7 in the proceedings against Edgar Gallegos and Exhibits 8a and 9 in the proceedings against Ana Gloria Gallegos. Both reflected the minimum wages of such employees to be over $74 per month plus room and board.

Hilda testified that she had been paid $20 per month from April, 1954, through January, 1955, but nothing after January, 1955 [Serv. R. pp. 92-93]. Based on Hilda's testimony and Exhibits 6 and 7, the Special Inquiry Officer ruled on June 6, 1956, that appellants had received "'gain" from assisting Hilda's illegal entry:

"By having the girl Hilda with the respondents to take care of their minor child, both respondents were able to pursue employment, and, in addition to being able to pursue employment, both respondents secured further gain by paying the girl Hilda Medrano-Represa substandard remuneration.

"Introduced into the record at the reopened hearing . . . on May 10, 1956, were reports of investigation showing that the wage scale for employment such as that engaged in by Miss Medrano-Represa ranged from $100 to $200 a month, plus room and board, depending upon the experience of

> the employee. As the particular experience of Miss Medrano-Represa is not particularly known, for the purpose of this proceeding it may be considered that she was eligible for the minimum wage scale of $100 per month, plus room and board."

Although appellants contend that "the direction on remand" was not followed (App. Br. p. 7, lines 20-21), the Board of Immigration Appeals thereafter, on August 14, 1956, dismissed the appeal from the Special Inquiry Officer's finding of *gain,* holding that the evidence during the reopened hearings showed that:

> "The wage scale in the Los Angeles, California, area for employment such as was performed by Hilda Medrano-Represa in the home of respondents ranged from $100 to $200 a month plus room and board, depending upon the experience of the employee. Hence, it can be seen that Hilda Medrano-Represa was eligible to have received from respondents at least the minimum wage and $100 per month plus room and board. During the period for which the girl Hilda was employed by the respondents she should have been paid at least $1600 plus room and board. Moreover, the evidence clearly shows that . . . she received only one month's pay of $20 for her services between January 1 and August, 1955. The respondents' attempt to justify their failure to pay Hilda the wages due her by claiming that they were put to considerable expense in bringing her to the United States is not pertinent to the issues involved. . . ."

The District Court in its Findings of Fact approved the Immigration Service's holdings, finding that, based on Exhibits 6 and 7, appellants received a monetary gain from hiring Hilda at substandard wages, in addition to the gain of having a housemaid [Finding No. IX, R. 10].

B. Evidence of Reasonable, Substantial and Probative Nature to Support Finding of Gain.

"Gain" is defined by *Webster's New International Dictionary* (2nd Ed., 1936), page 1025, as "increase or addition to what one has or that which is of profit, advantage, or benefit; resources or advantage acquired; profit."

Hilda testified at the deportation hearings that her contract with Mrs. Gallegos in San Salvador provided for $20 per month salary plus room and board; that she received this sum while employed by the Gallegos from April, 1954, through January, 1955, *but that she received nothing from February to August, 1955* [Serv. R. pp. 92-93].

Exhibits 6 and 7 in the proceedings against Mr. Gallegos [Exhs. 8a and 9 in the proceedings against Mrs. Gallegos] were admitted into evidence over appellants' objection that they constituted hearsay evidence. Assuming for the purpose of argument at this stage that these exhibits were properly admissible, it is clear from the exhibits that the prevailing wages for an inexperienced housemaid-baby-sitter was $75 to $150 per month [Exhs. 7 and 9]. Therefore, gain, financially accrued in the savings to appellants by hiring Hilda Medrano-Represa. In addition, Mrs. Gallegos was able to continue working [Serv. R. Exh. 4, p. 8], which constitutes "gain."

It would appear that the Special Inquiry Officer could have taken judicial notice of the financial gain to appellants even absent Exhibits 6 and 7 [or Exhs. 8a and 9] in view of the great monetary discrepancy between the $20 per month salary paid Hilda Medrano and the com-

monly known value of labor in the Los Angeles area at any time since World War II. $20 per month would only be $5 per week and not even $1 per day.

Appellants contend that their financial assistance to Hilda in an attempt to obtain a visa prior to her illegal entry should have been taken into consideration in ruling upon the issue of "gain." However, it appears that, as was held by the Board of Immigration Appeals in this case on August 14, 1956, such evidence is irrevelant as to the salary paid Hilda Medrano [Board of Imm. Appeals decision, p. 5].

Appellants complain that there is no showing in Exhibits 6 and 7 that the persons interviewed in obtaining the information reflected in the exhibits knew of the relationship between the alien Hilda Medrano nor of the nature and extent of the services actually rendered by Hilda (App. Br. p. 5, line 21, to p. 6, line 3). However, such a foundation for these exhibits was not necessary. The additional factors of relationship, nature and extent of services rendered were independent facts to be considered by the trier of facts in conjunction with the minimum wage established by Exhibits 6 and 7. No evidence was introduced by appellants showing Hilda's services were substandard.

Although appellants contend that Hilda Medrano-Represa was a "near relative" and that the appellants' acts did not constitute a "commercial venture" (App. Br. p. 6, lines 14 and 24), this was a question of fact for the trier of fact. The Special Inquiry Officer ruled that the facts in this case precluded the belief that respondents were attempting to help a distant relative, since they made no further attempts to obtain Hilda's visa after she entered the United States in April, 1954, and

did not return Hilda to Mexico to pursue her visa application [Serv. R., Inquiry Officer's decision, June 6, 1956, p. 4]. These facts are supported by the testimony of Edgar Gallegos in the deportation hearings [Serv. R. 12-14]. The evidence shows that Hilda was some relative of Mrs. Gallegos, but it is not clear how close [Serv. R. 7, 92, 146; Serv. R. Exh. 4, p. 4; Exh. 5, p. 3].

Mrs. Gallegos claimed at the deportation hearings that she also supplied Hilda with clothes [Serv. R. 183], but Hilda denied such [Serv. R. Exh. 5, p. 5].

An additional circumstance which indicates that appellants aided Hilda's entry into the United States for their own advantage, rather than to aid a relative, is the pattern of conduct indicated by the testimony of Edgar Gallegos in his sworn statement that before Hilda came to the United States, Mrs. Gallegos had a Guatemalan student who was no relation to her, performing the same duties as Hilda for $10 per week plus room and board [Serv. R. Exh. 4, p. 8].

Therefore, sufficient facts were present in the instant case to support the finding of fact that appellants' motivation was the securing of domestic help at a minimum cost, rather than assisting the alien or her family. Such facts distinguish this case from *In the Matter of G.....* (5 I. & N. S. Dec. 93) and place it in the category of cases covered by *In the Matter of R.....* (2 I. & N. S. Dec. 758), both Administrative decisions.

C. Admissibility of Investigative Reports.

Appellants contend (1) that Exhibits 6 and 7 [Exhs. 8a and 9 in the proceedings against Mrs. Gallegos] were inadmissible under Section 242.11(c) of 8 C. F. R.; (2) that Exhibits 6 and 7 were inadmissible as hearsay;

(3) that due process and a fair hearing were denied by the admission of Exhibits 6 and 7, because the right to cross-examine the individuals supplying the information to the investigating officers was denied by the failure to name them and by the failure to produce them at the hearing or prove that their presence was unobtainable.

(1) Section 242.11(c) of 8 C. F. R. cited by appellants for the contention that Exhibits 6 and 7 should have been sworn to, by its very wording applies only to information obtained during investigations prior to the issuance of a warrant of arrest, to be used to create a *prima facie* case to support the issuance of a warrant of arrest. Section 242.11(a) does not apply to information obtained during subsequent investigations to be used during the deportation hearings and having no connection with the application for warrant of arrest.

(2) Although hearsay evidence is objectionable in judicial proceedings, it is established law that *hearsay evidence is admissible in administrative proceedings.* (*Hyun v. Landon,* 219 F. 2d 404, 408 (C. A. Cal., 1955), affd. 350 U. S. 990, 76 S. Ct. 541, 100 L. Ed. 856; *Navarette-Navarette v. Landon,* 223 F. 2d 234, 237 (C. A. Cal., 1955), cert. den. 348 U. S. 916, 75 S. Ct. 298, 99 L. Ed. 718, reh. den. 75 S. Ct. 437.) Due process is not denied merely because some aspects of a judicial hearing are not followed. "In order to contend that due process has been violated, there must be a substantial denial of justice." (*In the Matter of Couto v. Shaughnessy,* 123 F. Supp. 926, 931 (D. C. N. Y., 1954), affd. 218 F. 2d 758 (C. A. N. Y., 1955), cert. den. 349 U. S. 952, 75 S. Ct. 879, 99 L. Ed. 1276; *United States ex rel. Bilokumsky v. Tod,* 263 U. S. 149, 157 (1923).)

At the time of the hearings against appellants, the regulation applicable to the introduction of evidence was Section 242.54(b) of 8 Code of Federal Regulations (1952 Rev.) which read as follows:

> "(b) Use of prior statements. The Spceial Inquiry Officer may enter of record any statement, oral or written, which is material and relevant to any issue in the case, previously made by the respondent or any other person during any investigation, examination or hearing. If objection thereto is made by the alien or his counsel or representative, the reasons for the objection, as well as the ruling thereon by the Special Inquiry Officer, shall be made a part of the record."

(Section 242.54(b) was amended in 1956 and is now found in substantially the same form in Sec. 242.14(c):

> "(c) Use of prior statements. The Special Inquiry Officer may receive in evidence any oral or written statement which is material and relative to any issue in the case previously made by the respondent or any other person during any investigation, examination, hearing or trial.")

Therefore, under Section 242.54(b) Exhibits 6 and 7 were admissible, since they constituted a "statement, . . . material and relevant to the case, previously made by . . . any . . . person during any investigation . . ."

(3) In vew of the rule permitting hearsay evidence, and Section 242.54(b) of the Regulations, Exhibits 6 and 7 were properly admitted, unless their admission created an unfair hearing and denied due process. (*Hays v. Zahariades,* 90 F. 2d 3 (C. C. A. Iowa, 1937), cert. den. 302 U. S. 734, 58 S. Ct. 119, 82 L. Ed. 567; *Quattrone v. Nicolls,* 210 F. 2d 513, 516, *supra.*)

Appellants complain that they were unable to cross-examine those persons who furnished the information to the investigators. This objection to evidence is merely the basis of the general hearsay rule. But since the law is well settled that hearsay evidence is admissible in administrative (including deportation) proceedings (*Navarette-Navarette v. Landon, supra*), this objection is of no merit unless it be shown that justice was denied by the Immigration Service's failure to produce such witnesses. However, in this case, no request for the production of such witnesses was made by appellants, who were at all times during the deportation hearings represented by counsel. It was held in *United States ex rel. Impastato v. O'Rourke,* 211 F. 2d 609, 611 (C. C. A. Mo., 1954), cert. den. 348 U. S. 827, 75 S. Ct. 47, 99 L. Ed. 652, that:

> *"Failure to produce, for cross-examination, witnesses* who cannot be found or *whose presence* cannot be procured or *is not requested,* does not make a deportation hearing unfair. United States ex rel. Ng Wing v. Brough, supra, page 379 of 15 F. 2d; Quock So Mui v. Nagle, 9 Cir., 11 F. 2d 492, 493; Moncado v. Ramsey, supra, page 196 of 167 F. 2d." (Emphasis supplied.)

Therefore, the failure to produce such witnesses for cross-examination did not render appellants' hearings unfair.

No objection was interposed to the introduction of Exhibits 6 and 7 on the ground that appellants were not given the opportunity of answering them; nor was any request made for an extension of time in which to produce further testimony to refute the same. In fact, appellants offered no evidence to refute the wage scale reflected by Exhibits 6 and 7.

Although appellants claim otherwise, Exhibit 7 revealed the name of the officer in the California Department of Labor who supplied the information. Appellants sought no extension of time in which to bring this officer (Mr. Joseph Levy) before the hearings, nor to produce contrary evidence from the informing offices of the United States Employment Security Office and the California Department of Labor. Appellants' contentions are similar to those made in the case of *Choy Gum v. Backus,* 223 Fed. 487, 492-493 (C. C. A. Cal., 1915), cert. den. 239 U. S. 649, 36 S. Ct. 284, 60 L. Ed. 485, which contentions were overruled in that case by the Nonth Circuit. Therefore, the introduction in evidence of exhibits was not unfair.

Conclusion.

It is respectfully submitted that the judgment of the District Court in favor of appellee, denying the relief prayed for in appellants' Complaint, and affirming the validity of the deportation order, should be affirmed.

Respectfully submitted,

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